

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DANIEL KLEEGERG, LISA STEIN  
and AUDREY HAYS,

Plaintiffs,

v.

LESTER EBER,  
ALEXBAY, LLC f/k/a LESTER EBER, LLC,  
CANANDAIGUA NATIONAL CORPORATION  
d/b/a CANANDAIGUA NATIONAL BANK  
AND TRUST, ESTATE OF ELLIOT  
W. GUMAER, JR., EBER BROS. & CO., INC.,  
EBER BROS. WINE AND LIQUOR CORP.,  
EBER BROS. WINE & LIQUOR METRO, INC.,  
EBER CONNECTICUT, LLC, and  
WENDY EBER,

Defendants.

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**DECLARATION OF PAUL  
F. KENEALLY IN OPPOSITION  
TO PLAINTIFFS' MOTION TO  
DISQUALIFY**

Civil Action No.  
16-CV-9517(LAK)

Paul F. Keneally, Esq., an attorney admitted to practice law before this Court, states and declares the following under the penalty of perjury:

1. I am a member of Underberg & Kessler LLP, attorneys for Defendants Lester Eber, Alexbay, LLC f/k/a Lester Eber LLC, Eber Bros. & Co., Inc., Eber Bros. Wine and Liquor Corp., Eber Bros. Wine & Liquor Metro, Inc. Eber-Connecticut, LLC and Wendy Eber (collectively, the "Eber Defendants"). As such, I am fully familiar with all pleadings and prior proceedings had herein.

2. I submit this Declaration and Exhibits in opposition to Plaintiffs' Motion to Disqualify Underberg & Kessler LLP from representing Eber Bros. & Co., Inc. and Eber Bros. Wine and Liquor Corporation.

3. Attached are the following Exhibits referenced in the accompanying Eber Defendants' Memorandum of Law:

Exhibit A: Eber Organizational Chart Pre-2012

Exhibit B: Hon. Matthew A. Rosenbaum Order dated May 11, 2012

Exhibit C: Summary of Lester Eber's payments for liabilities of EBWLC

Exhibit D: UCC Financing Statements

Exhibit E: Promissory Note dated October 1, 2002

Exhibit F: Amended and Restated Promissory Note dated March 13, 2006

Exhibit G: Line of Credit Note October 2009

Exhibit H: Guaranty and Security Agreement both dated February 26, 2010

Exhibit I: Amended and Restated Security Agreement dated February 11, 2011

Exhibit J: Debt Assumption Agreement dated February 11, 2011

Exhibit K: 2010 letters from Lester Eber to Sally Kleeberg and Audrey Hays

Exhibit L: Meeting Minutes dated August 18, 2011 for the Trust of Allen Eber

Exhibit M: Assignment of Notes and Security Agreements both dated January 18, 2012

Exhibit N: Alexbay, LLC's Notice pursuant to New York UCC 9-620

Exhibit O: Settlement Agreement dated February 24, 2017 with PBGC

I declare under penalty of perjury pursuant to 28 USC §1746 that the foregoing is true and correct.

Dated: November 30, 2018  
Rochester, New York

/s/ Paul F. Keneally  
Paul F. Keneally